

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUAN L. GUILLROY)	
Claimant)	
VS.)	
)	Docket No. 1,008,720
PHILLIPS SOUTHERN ELECTRIC)	
Respondent)	
AND)	
)	
BUILDERS ASSOCIATION SELF-INSURERS)	
FUND OF KANSAS)	
Insurance Fund)	

ORDER

Claimant appealed the November 2, 2005, Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on January 10, 2006.

APPEARANCES

Steven R. Wilson of Wichita, Kansas, appeared for claimant. Wade A. Dorothy of Lenexa, Kansas, appeared for respondent and its insurance fund (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument before the Board, the parties agreed claimant sustained a six percent whole person impairment due to the psychological and behavioral problems that resulted from his January 7, 2003, accident.

ISSUES

This is a claim for a January 7, 2003, accident and resulting injury. Claimant did not request a work disability (a permanent partial general disability greater than the whole person functional impairment rating) and, therefore, his request for permanent partial

disability benefits was limited to those based upon his whole person functional impairment. In the November 2, 2005, Award, Judge Barnes considered the impairment ratings provided by three medical providers and after averaging them awarded claimant benefits for a seven percent whole person functional impairment.

Claimant contends Judge Barnes erred. Claimant argues he sustained both psychological and physical impairments, which the Judge should have combined. Accordingly, claimant requests the Board to modify the November 2, 2005, Award to grant him benefits for a 13.5 percent whole person functional impairment.

Conversely, respondent argues claimant has sustained an 11 percent permanent partial general disability. In its brief to the Judge, respondent argued that claimant's six percent rating for psychological impairment should be combined with the five percent rating provided by Dr. Paul S. Stein for claimant's physical injuries.

The only issue before the Board on this appeal is the extent of claimant's injury and impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

On January 7, 2003, claimant received a severe electrical shock from an overhead power line. The parties stipulated claimant's accident arose out of and in the course of his employment with respondent. Claimant received emergency medical attention at a hospital. At that time, claimant complained of his neck, low back, blurred vision, both arms, left leg, hip and headaches.

Shortly after his accident, claimant received treatment from Paul S. Stein, M.D. And in January 2004, claimant began treating with Pat D. Do, M.D., whom he last saw in October 2004. While providing claimant with medical care, Dr. Do referred him to psychologist C. William Alexander, Ph.D., for treatment for adjustment disorder with depressed mood. Claimant last saw Dr. Alexander in October 2004.

Claimant testified at his deposition that he still experiences problems with his neck, low back, left hip down into his left leg, both upper extremities, memory loss, confusion, and headaches.

Dr. Stein, who is board-certified in neurosurgery, saw claimant on four occasions from January 27, 2003, through September 29, 2003. The doctor provided claimant with

conservative treatment, including epidural steroid injections. On September 29, 2003, Dr. Stein believed claimant was at maximum medical improvement. Also at that last visit, Dr. Stein provided his opinion of claimant's work restrictions and he rated claimant's permanent functional impairment at five percent to the whole person using the *AMA Guides*¹ (4th ed.). That impairment rating was based upon claimant's neck and back symptomatology. Dr. Stein found there was no indication to make a determination of radiculopathy and he could not find any basis for impairment related to memory and comprehension complaints. But after learning claimant treated with Dr. Alexander for some time after he last saw claimant, Dr. Stein agreed Dr. Alexander would be in a better position to assess claimant's psychological impairment.

After claimant last saw Dr. Stein, Judge Barnes appointed board-certified orthopedic surgeon Pat D. Do, M.D., as claimant's authorized treating physician. Dr. Do first saw claimant on January 22, 2004. At that initial visit, claimant complained of neck pain, low back pain and arm pain. At their next visit, March 16, 2004, claimant stated his symptoms had improved with physical therapy but he continued to experience fatigue, neck pain, low back pain, headaches, leg weakness and difficulty sleeping at night.

In late April and early June 2004, claimant reported to Dr. Do that he was still having some difficulty and pain. On June 29, 2004, claimant continued to receive therapy, which resulted in only short-term relief, and claimant was uncertain that the medication prescribed by Dr. Do was helping. At that time, Dr. Do referred claimant to Dr. Alexander for psychological evaluation and pain management.

When Dr. Do saw claimant on July 27, 2004, claimant reported no improvement of his symptoms. And when he saw claimant on August 24, 2004, claimant reported low back pain, neck pain, left shoulder pain and bilateral leg pain. The doctor noted that claimant's pain was mostly myofascial pain. On September 21, 2004, claimant reported to Dr. Do an increase in shoulder pain with physical therapy. When Dr. Do last saw claimant on October 7, 2004, claimant had been released by physical therapy as there had not been much improvement.

Dr. Do considered claimant to be at maximum medical improvement on October 7, 2004. By letter to respondent's insurance fund on December 6, 2004, Dr. Do opined claimant had a 10 percent whole person functional impairment from his work-related accidental injury. Although Dr. Do stated there was no particular table or chart in the *AMA Guides* for reference for status post-electrical shock, the doctor took into account claimant's neck, back, shoulder and bilateral leg pain when rating claimant's functional impairment.

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

As indicated above, Dr. Do referred claimant to psychologist C. William Alexander, Ph.D. Dr. Alexander first saw claimant on July 26, 2004, for persistent complaints of pain suffering and associated psychological symptoms. Dr. Alexander saw claimant for psychotherapy and pain management on numerous occasions from approximately August 9, 2004, until October 6, 2004. Dr. Alexander ultimately diagnosed claimant with adjustment disorder with depressed mood, which the doctor opined was directly traceable to claimant's work-related accidental injury. On January 3, 2005, Dr. Alexander rated claimant's mental behavioral symptoms at five to seven percent to the whole person.

Claimant sustained both a physical and psychological injury due to his severe electrical shock. The Board is not persuaded that Dr. Stein's rating is any more persuasive than Dr. Do's rating. Accordingly, the Board averages the five and 10 percent ratings and finds that claimant sustained a 7.5 percent whole person functional impairment due to his physical injuries.

Combining the 7.5 percent whole person functional impairment with the six percent whole person impairment from the psychological injury creates a 13.5 percent whole person impairment. Accordingly, the November 2, 2005, Award should be modified to grant claimant benefits for a 13.5 percent permanent partial general disability under K.S.A. 44-510e.

AWARD

WHEREFORE, the Board modifies the November 2, 2005, Award and increases claimant's permanent partial general disability from seven percent to 13.5 percent.

Juan L. Guillroy is granted compensation from Phillips Southern Electric and its insurance fund for a January 7, 2003, accident and resulting disability. Based upon an average weekly wage of \$531.51, Mr. Guillroy is entitled to receive 69.29 weeks of temporary total disability benefits at \$354.36 per week, or \$24,553.60, plus 48.70 weeks of permanent partial general disability benefits at \$354.36 per week, or \$17,257.33, for a 13.5 percent permanent partial general disability, making a total award of \$41,810.93, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of January, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Fund
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director